

Robert A. Henry (#015104)  
David G. Barker (#024657)  
Rachael Peters Pugel (#032626)  
SNELL & WILMER L.L.P.  
One Arizona Center  
400 E. Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202  
Telephone: 602.382.6000  
Facsimile: 602.382.6070  
E-Mail: bhenry@swlaw.com  
dbarker@swlaw.com  
rpugel@swlaw.com

*Attorneys for Defendants and Counterclaimants  
1079765 B.C. Limited d/b/a N2 Pack Canada, Inc.,  
Eric Marciniak, Brendan Pogue, Alex Abellan,  
and Chakra Cannabis Corp.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

N2 Packaging Systems, LLC, an  
Arizona limited liability company,

Plaintiff,

v.

N2 Pack Canada, Inc., an  
unincorporated fictitious entity; Eric  
Marciniak, individually; Brendan  
Pogue, individually; Alejo Abellan aka  
Alex Abellan, individually; Chakra  
Cannabis Corp., a Canadian federal  
corporation; and Does 1-10, inclusive

Defendants.

No. 2:19-cv-02351-NVW

**DEFENDANTS' ANSWER TO VERIFIED  
FIRST AMENDED COMPLAINT AND  
COUNTERCLAIMS**

(The Honorable Neil V. Wake)

1079765 B.C. Limited d/b/a N2 Pack  
Canada, Inc., a British Columbia  
entity; Eric Marciniak; Brendan Pogue;  
Alejo Abellan aka Alex Abellan;  
Chakra Cannabis Corp., a Canadian  
federal corporation,

Counterclaimants,

v.

N2 Packaging Systems, LLC, an  
Arizona limited liability company,

Counterdefendant.

For their answer to the Verified First Amended Complaint [Doc. 9], Defendants N2 Pack Canada, Inc. (“N2 Pack Canada”), Eric Marciniak, Brendan Pogue, Alex Abellan, and Chakra Cannabis Corp. (“Chakra”) (collectively, “Defendants”) admit, deny, and allege as follows:

**Parties and Jurisdiction**

1. Answering Paragraph 1, Defendants admit only that N2 Packaging Systems, LLC was formed as an Arizona limited liability company on February 4, 2016. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 1 and, accordingly, deny the same.

2. Answering Paragraph 2, Defendants state that N2 Pack Canada is the d/b/a of 1079765 B.C. Limited, which was incorporated under the laws of British Columbia, Canada on June 17, 2016. Defendants admit that 1079765 B.C. Limited does business in British Columbia, Canada. Defendants deny any remaining allegation in Paragraph 2.

3. Defendants admit the allegations in Paragraph 3.

4. Defendants admit the allegations in Paragraph 4.

5. Defendants admit the allegations in Paragraph 5.

6. Answering Paragraph 6, Defendants admit only that Marciniak, Pogue, and Abellan are directors of 1079765 B.C. Limited d/b/a N2 Pack Canada. Defendants deny any remaining allegation in Paragraph 6.

7. Defendants admit the allegations in Paragraph 7.

8. Answering Paragraph 8, Defendants admit only that Abellan is a director of Chakra. Defendants deny any remaining allegation in Paragraph 8.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 9 and, accordingly, deny the same.

10. Answering Paragraph 10, Defendants admit only that the N2 Pack Canada Packaging Supply Agreement provides that “Any and all claims, questions or disputes regarding the interpretation, performance and enforceability of this Agreement, the rights

1 and remedies of the Parties hereunder, and all related actions or counterclaims shall be  
2 initiated and prosecuted in the courts of the state of Arizona located in Phoenix, Maricopa  
3 County, Arizona.” [See Doc. 9-1 at 136 § 20.] Defendants deny any remaining allegation  
4 in Paragraph 10.

5 11. Answering Paragraph 11, Defendants admit only that Plaintiff alleges N2  
6 Canada breached the N2 Pack Canada Packaging Supply Agreement, that the N2 Canada  
7 Principals’<sup>1</sup> actions that caused the same, and that N2 Packaging Systems, LLC is enforcing  
8 its rights under the N2 Pack Canada Packaging Supply Agreement in response to the same.  
9 Defendants deny any wrongdoing, including that they breached the N2 Pack Canada  
10 Packaging Supply Agreement. Defendants deny any remaining allegation in Paragraph 11.

11 12. Answering Paragraph 12, Defendants admit only that the Independent  
12 Contractor Agreement provides that “Any and all claims, questions or disputes regarding  
13 the interpretation, performance and enforceability of this Agreement, the rights and  
14 remedies of the parties hereunder, and all related actions or counterclaims shall be initiated  
15 and prosecuted in the courts of the state of Arizona located in Phoenix, Maricopa County,  
16 Arizona.” [Doc. 9-2 at 5 § 6.] Defendants deny any remaining allegation in Paragraph 12.

17 13. Answering Paragraph 13, Defendants admit only that Plaintiff alleges Abellan  
18 breached the Independent Contractor Agreement, interfered with the N2 Canada  
19 Defendants’ obligations under the Packaging Supply Agreement, and interfered with  
20 Chakra’s obligations under the Chakra Packaging Supply Agreement, and that N2  
21 Packaging Systems, LLC is enforcing its rights under the Independent Contractor  
22 Agreement and Packaging Supply Agreements in response to the same. Defendants deny  
23 any wrongdoing, including that they breached any agreement. Defendants deny any  
24 remaining allegation in Paragraph 13.

25 14. Answering Paragraph 14, Defendants admit only that the Chakra Packaging  
26 Supply Agreement provides that “Any and all claims, questions or disputes regarding the  
27

28 <sup>1</sup> The “N2 Canada Principals” are defined in the Verified First Amended Complaint  
as Marciniak, Pogue, and/or Abellan. [Doc. 9 at ¶ 6.]

1 interpretation, performance and enforceability of this Agreement, the rights and remedies  
2 of the parties hereunder, and all related actions or counterclaims shall be initiated and  
3 prosecuted in the courts of the state of Arizona located in Phoenix, Maricopa County,  
4 Arizona.” [Doc. 9-2 at 16 § 21.] Defendants deny any remaining allegation in Paragraph  
5 14.

6 15. Answering Paragraph 15, Defendants admit only that Plaintiff alleges its  
7 separate claims against Chakra and Abellan arise out of Chakra’s breach of its obligations  
8 under the Chakra Packaging Supply Agreement, Abellan’s actions as Chakra’s principal  
9 officer and/or shareholder that caused the same, and N2 Packaging System, LLC’s  
10 enforcement of its rights under the Chakra Packaging Supply Agreement in response to the  
11 same. Defendants deny any wrongdoing, including that Chakra or Abellan breached the  
12 Chakra Packaging Supply Agreement. Defendants deny any remaining allegation in  
13 Paragraph 15.

14 16. Answering Paragraph 16, Defendants deny that Marciniak and Pogue are  
15 subject to personal jurisdiction in Arizona. Defendants admit the remaining allegations in  
16 Paragraph 16.

17 17. Defendants deny the allegations in Paragraph 17.

18 18. Defendants deny the allegations in Paragraph 18.

19 19. Defendants deny the allegations in Paragraph 19.

#### 20 **Factual Allegations Relevant to All Claims**

21 20. Answering Paragraph 20, Defendants admit only that N2 Packaging Systems,  
22 LLC purports to be in the business of selling packaging for the distribution of controlled  
23 substances in Arizona, the United States, and Internationally. Defendants are without  
24 knowledge or information sufficient to form a belief as to the truth or falsity of the  
25 remaining allegations set forth in Paragraph 20 and, accordingly, deny the same.

26 21. Defendants deny the allegations in Paragraph 21.

27 22. Defendants deny the allegations in Paragraph 22.

28 23. Answering Paragraph 23, Defendants admit only that N2 Packaging alleges

1 in the Verified First Amended Complaint that it owns the following U.S. Patents: U.S.  
2 Patent No. 8,863,947; U.S. Patent No. 9,878,821; and U.S. Patent No. 10,124,941.  
3 Defendants deny any remaining allegation in Paragraph 23.

4 24. Answering Paragraph 24, Defendants admit only that U.S. Patent No.  
5 8,863,947, Application No. 13/233,931, was filed on September 15, 2011 for “Storage  
6 preservation and transport for a controlled substance.” Defendants deny any remaining  
7 allegation in Paragraph 24.

8 25. Answering Paragraph 25, Defendants admit only that the abstract in U.S.  
9 Patent No. 8,863,947 states:

10 The present application provides a unique process of canning a controlled  
11 substance where the cans are hermetically sealed and clearly identified in  
12 a number of different ways. The process will begin by inserting a packing  
13 and dehumidifying agent, preferably a formed rice cake. The controlled  
14 substance is then inserted. In some cases the rice cakes will be eliminated  
15 or just a single rice cake will be used on the top or the bottom. If the  
16 process of storing the controlled substance in an inert atmosphere is  
17 desired, the oxygen in the container is replaced with gaseous nitrogen.  
18 After the container has been sealed in the conventional pop-top canning  
19 procedure; an identifying scent substance is permanently adhered to the  
20 can or label. An internal or external microchip could be used to detect,  
21 track and trace the container filled with a controlled substance.

22 Defendants deny any remaining allegation in Paragraph 25.

23 26. Answering Paragraph 26, Defendants admit only that U.S. Patent No.  
24 8,863,947 was issued on October 21, 2014. Defendants deny any remaining allegation in  
25 Paragraph 26.

26 27. Answering Paragraph 27, Defendants admit only that U.S. Patent No.  
27 9,878,821, Application No. 14/519,031, was filed on October 20, 2014 for “Container for  
28 the storage, preservation, identification, tracking and transport of a federally controlled  
substance.” Defendants deny any remaining allegation in Paragraph 27.

28 28. Answering Paragraph 28, Defendants admit only that the abstract in U.S.  
Patent No. 9,878,821 states:

The present application provides a container for storage, preservation,  
identification, tracking and transport of a federally controlled substance  
comprising: (a) a one or more piece airtight container having an exterior  
surface and an interior surface, an upper portion and a lower portion,  
configured for containing a federally controlled substance; (b) an inner  
coating liner lining said interior surface of said airtight container; (c) a one

1 piece tamper resistant easy open lid affixed to said upper portion of said  
2 airtight container; and (d) identifying indicia located on the exterior  
3 surface for identifying the contained federally controlled substance  
4 contents within said container; wherein said airtight container configured  
5 for containing a federally controlled substance, has the atmosphere  
6 evacuated and the container filled with an inert gas before the airtight  
7 container is hermetically sealed, containing a federally controlled  
8 substance inside.

9 Defendants deny any remaining allegation in Paragraph 28.

10 29. Answering Paragraph 29, Defendants admit only that U.S. Patent No.  
11 9,878,821 was issued on January 30, 2018. Defendants deny any remaining allegation in  
12 Paragraph 29.

13 30. Answering Paragraph 30, Defendants admit only that U.S. Patent Application  
14 No. 15/616483 was filed on June 7, 2017 for "Child resistant and senior friendly can lid."  
15 Defendants deny any remaining allegation in Paragraph 30.

16 31. Answering Paragraph 31, Defendants admit only that the abstract in Patent  
17 Application No. 15/616483 states:

18 The present invention is directed to a can lid that is child resistant, and at  
19 the same time senior friendly, and can be initially installed on a can to be  
20 removed by an adult, especially a senior adult, and be put back on the can  
21 in the same condition where a child could still not be able to easily remove  
22 it. The child resistant and senior friendly can lid provided has a replaceable  
23 can lid and a locking member, such that when a can is initially opened, it  
24 may be readily resealed. The child resistant and senior friendly can lid has  
25 tapered, smooth sides to make the lid difficult to grasp and a sealing ledge  
26 on the inside surface to grab the seam roll of the upper edge of the can.  
27 The lid sealing ledge is relieved in two areas ninety degrees apart leaving  
28 a ridge to maintain a seal when the lid is attached to a can. The can lid will  
be flexible enough to bend for removal by seniors but resistant to removal  
by children.

Defendants deny any remaining allegation in Paragraph 31.

32. Answering Paragraph 32, Defendants admit only that N2 Packaging purports  
to own U.S. Patent Publication No. US-2017-0355-495-A1. Defendants deny any  
remaining allegation in Paragraph 32.

33. Answering Paragraph 33, Defendants admit only that U.S. Patent No.  
10,124,941, Application No. 15/882,962, was filed on January 29, 2018 for "Re-sealable  
container for a controlled substance having a child resistant lid." Defendants deny any  
remaining allegation in Paragraph 33.



34. Answering Paragraph 34, Defendants admit only that the abstract in Patent No. 10,124,941 states:

Provided is a re-sealable container for storing, preserving, identifying, tracking and transporting a federally controlled substance having a child resistant and senior friendly lid, and a process for identifying and tracking federally controlled substances within the re-sealable containers. The re-sealable federally controlled substance containers include a two-piece child resistant and senior friendly lid and a 2-factor authentication identification tag, as well as a microchip for identifying the container controlled substance contents and tracking the container. Controlled substance contents within the re-sealable containers are optimized for long term storage by removal of the oxygen therein, and the containers and controlled substance contents can be readily identified, detected, tracked and traced after being filled with a federally controlled substance.

Defendants deny any remaining allegation in Paragraph 34.

35. Answering Paragraph 35, Defendants admit only that U.S. Patent No. 10,124,941 was issued on November 13, 2018. Defendants deny any remaining allegation in Paragraph 35.

36. Answering Paragraph 36, Defendants admit only that WIPO International Publication No. WO 2016/069304 lists a filing date of October 19, 2015 and lists as the sole applicant N2 Packaging Systems, LLC. Defendants deny any remaining allegation in Paragraph 36.

37. Answering Paragraph 37, Defendants admit only that international patent application number PCT/US2015/05618 lists a filing date of October 19, 2015 and a title of "Container for Federally Controlled Substance." Defendants deny any remaining allegation in Paragraph 37.

38. Answering Paragraph 38, Defendants admit only that WIPO publication number WO 2016/069304 states:

This application provides a unique container for storage, preserving, identifying, tracking and transporting a federally controlled substance and a canning process for federally controlled substances where the cans enamel lined, atmosphere evacuated, inert gas filled, and hermetically sealed, and the federally controlled substance are cleared identified in a number of ways. In particular, the federally controlled substance containers are optimized for long term storage and can be readily detected, tracked and traced when filled with a federally controlled substance.

Defendants deny any remaining allegation in Paragraph 38.

1           39. Defendants admit that WO 2016/069304 A1 lists a date of May 6, 2016.  
2 Defendants deny any remaining allegation in Paragraph 39.

3           40. Defendants are without knowledge or information sufficient to form a belief  
4 as to the truth or falsity of the allegations set forth in Paragraph 40 and, accordingly, deny  
5 the same.

6           41. Answering Paragraph 41, Defendants admit only that N2 Packaging Systems,  
7 LLC has a brick-and-mortar store in Twin Falls, Idaho and has an online presence.  
8 Defendants are without knowledge or information sufficient to form a belief as to the truth  
9 or falsity of the remaining allegations set forth in Paragraph 41 and, accordingly, deny the  
10 same.

11           42. Defendants are without knowledge or information sufficient to form a belief  
12 as to the truth or falsity of the allegations set forth in Paragraph 42 and, accordingly, deny  
13 the same.

14           43. Defendants are without knowledge or information sufficient to form a belief  
15 as to the truth or falsity of the allegations set forth in Paragraph 43 and, accordingly, deny  
16 the same.

17           44. Defendants deny the allegations in Paragraph 44.

18           45. Defendants are without knowledge or information sufficient to form a belief  
19 as to the truth or falsity of the allegations set forth in Paragraph 45 and, accordingly, deny  
20 the same.

21           46. Defendants are without knowledge or information sufficient to form a belief  
22 as to the truth or falsity of the allegations set forth in Paragraph 46 and, accordingly, deny  
23 the same.

24           47. Answering Paragraph 47, Defendants admit only that in or about early 2017,  
25 N2 Packaging Systems, LLC and Abellan discussed entering into a business venture in  
26 Canada, whereby Abellan would provide certain services to N2 Packaging Systems, LLC  
27 as set forth in the Independent Contractor Agreement. Defendants deny any remaining  
28 allegation in Paragraph 47.



1 48. Answering Paragraph 48, Defendants admit only that the Independent  
2 Contractor Agreement sets forth the entire understanding of the parties with respect to the  
3 subject matter therein and supersedes all prior agreements, written and oral, between the  
4 parties. [See Doc. 9-2 at 6, § 11.] Defendants deny any remaining allegation in Paragraph  
5 48.

6 49. Defendants deny the allegations in Paragraph 49.

7 50. Defendants deny the allegations in Paragraph 50.

8 51. Answering Paragraph 51, Defendants admit only that the Chakra Packaging  
9 Supply Agreement sets forth the entire understanding of the parties with respect to the  
10 subject matter therein and supersedes all prior agreements, written and oral, between the  
11 parties. [See Doc. 9-2 at 17 § 27.] Defendants further admit that the Chakra Packaging  
12 Supply Agreement has an effective date of June 27, 2017. Defendants deny any remaining  
13 allegation in Paragraph 51.

14 52. Defendants deny the allegations in Paragraph 52.

15 53. Answering Paragraph 53, Defendants deny that the “Proprietary Process,” to  
16 the extent it is described in any published patent or patent application, is confidential.  
17 Defendants admit only that the Chakra Packaging Supply Agreement states:

18 N2 Packaging shall provide to Processor its Packaging Process that utilizes  
19 the Proprietary Process on a non-exclusive, revocable license basis, together  
20 with the sale of packaging materials in the herein provided minimum  
21 required quantities. Processor shall utilize N2 Packaging’s Packaging  
22 Process that utilizes the Proprietary Process with the provided packaging  
23 equipment, on a non-exclusive, revocable license basis solely for Product,  
together with the purchase of packaging materials from N2 Packaging. N2  
Packaging shall have the right to revoke immediately the license to use the  
Proprietary Process upon breach by Processor of the terms of this Agreement.

24 [See Doc. 9-2 at 9 § 2.] Defendants deny any remaining allegation in Paragraph 53.

25 54. Answering Paragraph 54, Defendants admit only that the Chakra Packaging  
26 Supply Agreement provides:

27 N2 Packaging owns the Proprietary Process, including all applicable  
28 patent(s). Processor shall have no right, title or interest in or to the Proprietary  
Process, except the limited license to utilize the Proprietary Process pursuant

1 to and in accordance with this Agreement. Processor shall have no rights  
2 under any technology rights, whether patentable or not, or any patents, patent  
3 applications, trade secrets or other proprietary rights of N2 Packaging.

4 [See Doc. 9-2 at 13 § 12.1.] Defendants deny any remaining allegation in Paragraph 54.

5 55. Answering Paragraph 55, Defendants admit only that the Chakra Packaging  
6 Supply Agreement provides:

7 N2 Packaging owns the Proprietary Process, including all applicable  
8 patent(s). Processor shall have no right, title or interest in or to the Proprietary  
9 Process, except the limited license to utilize the Proprietary Process pursuant  
10 to and in accordance with this Agreement. Processor shall have no rights  
11 under any technology rights, whether patentable or not, or any patents, patent  
12 applications, trade secrets or other proprietary rights of N2 Packaging.

13 [See *id.*] Defendants deny any remaining allegation in Paragraph 55.

14 56. Answering Paragraph 56, Defendants admit only that Abellan communicated  
15 to N2 Packaging that it would benefit by working with Marciniak, Pogue, and Stephen  
16 Schroeder in Canada. Defendants deny any remaining allegation in Paragraph 56.

17 57. Defendants deny the allegations in Paragraph 57.

18 58. Answering Paragraph 58, Defendants admit only that Abellan communicated  
19 to N2 Packaging that it would benefit by working with Marciniak, Pogue, and Stephen  
20 Schroeder in Canada. Defendants deny any remaining allegation in Paragraph 58.

21 59. Answering Paragraph 59, Defendants deny that the Chakra Packaging Supply  
22 Agreement contained a provision requiring exclusivity on the part of N2 Packaging  
23 Systems, LLC. Defendants are without knowledge or information sufficient to form a belief  
24 as to the truth or falsity of the remaining allegations set forth in Paragraph 59 and,  
25 accordingly, deny the same.

26 60. Answering Paragraph 60, Defendants admit only that N2 Packaging Systems,  
27 LLC and N2 Pack Canada engaged in discussions regarding a packaging supply agreement.  
28 Defendants further state that the N2 Pack Canada Packaging Supply Agreement sets forth  
the entire understanding of the parties with respect to the subject matter therein and  
supersedes all prior agreements, written and oral, between the parties. [See Doc. 9-1 at 137  
§ 26.] Defendants deny any remaining allegation in Paragraph 60.

61. Defendants deny the allegations in Paragraph 61.

62. Defendants deny the allegations in Paragraph 62.

63. Defendants admit the allegations in Paragraph 63.

64. Answering Paragraph 64, Defendants admit only that the N2 Pack Canada Packaging Supply Agreement provides:

Subject to, and in accordance with, the terms and conditions of this Agreement, and in consideration of a one-time licensing, setup and training fee of Five Thousand and 00/100 Dollars (\$5,000.00). N2 Packaging shall provide to Processor its Packaging Process that utilizes the Proprietary Process on a non-exclusive, revocable license basis, together with the sale of packaging materials in the herein provided minimum required quantities. Processor shall utilize N2 Packaging's Packaging Process that utilizes the Proprietary Process with the provided packaging equipment, on a non-exclusive, revocable license basis solely for Product, together with the purchase of packaging materials from N2 Packaging. . . . Further, the labeling of Processor's packaged Product shall include N2 Packaging's logo utilizing N2 Packaging's label template. Processor acknowledges the quality of the Product is material to N2 Packaging's grant to Processor of the license to use, and Processor's use of, the Packaging Process that utilizes the Proprietary Process. Accordingly, Processor shall observe, follow and conform to the N2 Packaging Requirements for Use and Quality Control Specification set forth at Attachment B hereof.

[See Doc. 9-1 at 129 § 2.] Defendants deny any remaining allegation in Paragraph 64.

65. Answering Paragraph 65, Defendants admit only that the N2 Pack Canada Packaging Supply Agreement provides:

Subject to, and in accordance with, the terms and conditions of this Agreement, and in consideration of a one-time licensing, setup and training fee of Five Thousand and 00/100 Dollars (\$5,000.00). N2 Packaging shall provide to Processor its Packaging Process that utilizes the Proprietary Process on a non-exclusive, revocable license basis, together with the sale of packaging materials in the herein provided minimum required quantities. Processor shall utilize N2 Packaging's Packaging Process that utilizes the Proprietary Process with the provided packaging equipment, on a non-exclusive, revocable license basis solely for Product, together with the purchase of packaging materials from N2 Packaging. . . . Further, the labeling of Processor's packaged Product shall include N2 Packaging's logo utilizing N2 Packaging's label template. Processor acknowledges the quality of the Product is material to N2 Packaging's grant to Processor of the license to use, and Processor's use of, the Packaging Process that utilizes the Proprietary

1 Process. Accordingly, Processor shall observe, follow and conform to the N2  
2 Packaging Requirements for Use and Quality Control Specification set forth  
3 at Attachment B hereof.

4 [See *id.*] Defendants deny any remaining allegation in Paragraph 65.

5 66. Answering Paragraph 66, Defendants admit only that N2 Packaging Systems,  
6 LLC improperly terminated what the N2 Pack Canada Packaging Supply Agreement refers  
7 to as a “Preferred Exclusive Basis” on September 19, 2018. Defendants deny any remaining  
8 allegation in Paragraph 66.

9 67. Defendants are without knowledge or information sufficient to form a belief  
10 as to the truth or falsity of the allegations set forth in Paragraph 67 and, accordingly, deny  
11 the same.

12 68. Defendants deny the allegations in Paragraph 68.

13 69. Answering Paragraph 69, Defendants admit only that the N2 Pack Canada  
14 Packaging Supply Agreement provides:

15 N2 Packaging shall provide to Processor its Packaging Process that utilizes  
16 the Proprietary Process on a non-exclusive, revocable license basis, together  
17 with the sale of packaging materials in the herein provided minimum  
18 required quantities. Processor shall utilize N2 Packaging’s Packaging  
19 Process that utilizes the Proprietary Process with the provided packaging  
20 equipment, on a non-exclusive, revocable license basis solely for Product,  
21 together with the purchase of packaging materials from N2 Packaging.

22 [See Doc. 9-1 at 129, § 2.] Defendants deny any remaining allegation in Paragraph 69.

23 70. Answering Paragraph 70, Defendants admit only that the N2 Pack Canada  
24 Packaging Supply Agreement provides:

25 N2 Packaging shall provide to Processor its Packaging Process that utilizes  
26 the Proprietary Process on a non-exclusive, revocable license basis, together  
27 with the sale of packaging materials in the herein provided minimum  
28 required quantities. Processor shall utilize N2 Packaging’s Packaging  
Process that utilizes the Proprietary Process with the provided packaging  
equipment, on a non-exclusive, revocable license basis solely for Product,  
together with the purchase of packaging materials from N2 Packaging.

[See *Id.*] Defendants deny any remaining allegation in Paragraph 70.

71. Answering Paragraph 71, Defendants admit only that the N2 Pack Canada

1 Packaging Supply Agreement provides:

2 N2 Packaging owns the Proprietary Process, including an all applicable  
3 patent(s). Processor shall have no right, title, or interest in or to the  
4 Proprietary Process, except the limited license to utilize the Proprietary  
5 Process pursuant to and in accordance with this Agreement. Processor shall  
6 have no rights under any technology rights, whether patentable or not, or any  
7 patents, patent applications, trade secret or other proprietary rights of N2  
8 Packaging. Processor shall not modify or otherwise reverse engineer the  
9 Proprietary Process; and shall not seek any intellectual property protection,  
10 including, without limitation, any patent relating to or otherwise directed to  
11 the manufacture or use of the Proprietary Process in conjunction or in  
12 combination with any other product or process utilizing, employing or  
13 otherwise applying the Proprietary Process or any portion or derivations  
14 thereof.

15 [See *id.* at 133 § 11.1.] Defendants deny any remaining allegation in Paragraph 71.

16 72. Answering Paragraph 72, Defendants admit only that the N2 Pack Canada  
17 Packaging Supply Agreement provides:

18 N2 Packaging owns the Proprietary Process, including an all applicable  
19 patent(s). Processor shall have no right, title, or interest in or to the  
20 Proprietary Process, except the limited license to utilize the Proprietary  
21 Process pursuant to and in accordance with this Agreement. Processor shall  
22 have no rights under any technology rights, whether patentable or not, or any  
23 patents, patent applications, trade secret or other proprietary rights of N2  
24 Packaging. Processor shall not modify or otherwise reverse engineer the  
25 Proprietary Process; and shall not seek any intellectual property protection,  
26 including, without limitation, any patent relating to or otherwise directed to  
27 the manufacture or use of the Proprietary Process in conjunction or in  
28 combination with any other product or process utilizing, employing or  
otherwise applying the Proprietary Process or any portion or derivations  
thereof.

[See *id.*] Defendants deny any remaining allegation in Paragraph 72.

73. Answering Paragraph 73, Defendants admit only that N2 Pack Canada's use  
of the Proprietary Process was governed by the terms of the N2 Pack Canada Packaging  
Supply Agreement—to the extent any such terms are valid and enforceable, which  
Defendants do not admit—and any applicable law. Defendants deny any remaining  
allegation in Paragraph 73.

74. Answering Paragraph 74, Defendants admit only that the N2 Pack Canada

1 Packaging Supply Agreement provides:

2 Processor shall execute such documentation and take other steps requested  
3 by N2 Packaging to maintain, establish, and protect N2 Packaging's  
4 ownership interests in the Proprietary Process, and Processor shall not take  
any actions inconsistent with such ownership by N2 Packaging.

5 [See Doc. 9-1 at 133 § 11.1.] Defendants further admit that the N2 Pack Canada Packaging  
6 Supply Agreement contains a mutual confidentiality clause and provides that "Each party  
7 shall exercise the same care and measures to protect the Confidential Information of the  
8 other party as it uses to protect its own confidential information and trade secrets, provided,  
9 however, that in no event will the measures take be less than reasonable." [See *id.*, 133–34  
10 §§ 11.2–11.3.] Defendants deny any remaining allegation in Paragraph 74.

11 75. Answering Paragraph 75, Defendants admit only that Section 10 of the N2  
12 Pack Canada Packaging Supply Agreement provides:

13 During the term of this Agreement, Processor: (i) shall not utilize a packaging  
14 line of any type to package Product utilizing N2 Packaging's Packaging  
15 Process; and (ii) shall not utilize N2 Packaging's Proprietary Process or the  
16 packaging equipment for any purpose or reason other than to package its  
17 Product . . . N2 Packaging shall have the right to terminate this Agreement  
18 immediately upon breach by Processor of the terms of this Agreement, and  
specifically in this Section, and may seek injunctive relief upon any violation  
19 or threatened violation of the terms of this Section, in addition to all other  
rights and remedies available at law or in equity, without having to post a  
20 bond or other security.

21 [See Doc. 9-1 at 132 § 10.] Defendants deny any remaining allegation in Paragraph 75.

22 76. Answering Paragraph 76, Defendants admit only that Section 11.1 of the N2  
23 Pack Canada Packaging Supply Agreement provides:

24 N2 Packaging owns the Proprietary Process, including an all applicable  
25 patent(s). Processor shall have no right, title, or interest in or to the  
26 Proprietary Process, except the limited license to utilize the Proprietary  
27 Process pursuant to and in accordance with this Agreement. Processor shall  
28 have no rights under any technology rights, whether patentable or not, or any  
patents, patent applications, trade secret or other proprietary rights of N2  
Packaging. Processor shall not modify or otherwise reverse engineer the  
Proprietary Process; and shall not seek any intellectual property protection,  
including, without limitation, any patent relating to or otherwise directed to  
the manufacture or use of the Proprietary Process in conjunction or in  
combination with any other product or process utilizing, employing or



otherwise applying the Proprietary Process or any portion or derivations thereof. Processor shall execute such documentation and take other steps requested by N2 Packaging to maintain, establish, and protect N2 Packaging's ownership interests in the Proprietary Process, and Processor shall not take any actions inconsistent with such ownership by N2 Packaging. N2 Packaging shall have the right to terminate this Agreement immediately upon breach by Processor of the terms of this Agreement, and specifically this Section, and may seek injunctive relief upon any violation or threatened violation of the terms of this Section, in addition to all other rights and remedies available at law or in equity, without having to post a bond or other security.

[See *id.* at 133 § 11.1.] Defendants deny any remaining allegation in Paragraph 76.

77. Answering Paragraph 77, Defendants admit only that Section 11.2 of the N2 Pack Canada Packaging Supply Agreement provides:

The Confidential Information received by a party (the "Receiving Party") from the other party (the "Disclosing Party") shall not be disclosed by the Receiving Party to any Third Party without the express written consent of the Disclosing Party; and shall not be used by the Receiving Party for any purposes other than those contemplated by this Agreement.

[See *id.* at 133–34 § 11.2.] Defendants deny any remaining allegation in Paragraph 77.

78. Defendants deny the allegations in Paragraph 78.

79. Defendants deny the allegations in Paragraph 79.

80. Defendants deny the allegations in Paragraph 80.

81. Defendants deny the allegations in Paragraph 81.

82. Answering Paragraph 82, Defendants admit that Truro Herbal Co. became a licensed producer of cannabis in Canada in June of 2019. Defendants deny any remaining allegation in Paragraph 82.

83. Answering Paragraph 83, Defendants admit only that in or about early 2018, Truro Herbal Co. placed an order through N2 Pack Canada related to the N2 Pack Canada Packaging Supply Agreement. Defendants deny any remaining allegation in Paragraph 83.

84. Answering Paragraph 84, Defendants admit only that in or about early 2018, Truro Herbal Co. placed an order through N2 Pack Canada related to the N2 Pack Canada Packaging Supply Agreement. Defendants deny any remaining allegation in Paragraph 84.



85. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 85 and, accordingly, deny the same.

86. Defendants deny the allegations set forth in Paragraph 86.

87. Defendants deny the allegations set forth in Paragraph 87.

88. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 88 and, accordingly, deny the same.

89. Defendants deny the allegations set forth in Paragraph 89.

90. Defendants deny the allegations set forth in Paragraph 90.

91. Defendants deny the allegations set forth in Paragraph 91.

92. Defendants deny the allegations set forth in Paragraph 92.

93. Defendants deny the allegations set forth in Paragraph 93.

94. Defendants deny the allegations set forth in Paragraph 94.

95. Defendants deny the allegations set forth in Paragraph 95.

96. Defendants deny the allegations set forth in Paragraph 96.

97. Defendants deny the allegations set forth in Paragraph 97.

98. Defendants deny the allegations set forth in Paragraph 98.

99. Answering Paragraph 99, Defendants admit only that on January 15, 2019, Leafly published an article identifying Marciniak as the Vice President of Nitrocin regarding Nitrocin and the Lift Expo. Defendants deny any remaining allegation in Paragraph 99.

100. Answering Paragraph 100, Defendants admit only that the article stated:

Nitrocin is a canning company for cannabis, keeping buds fresh till you are ready to crack a green one. Just like a can of tuna, Nitrocin comes with a pull tab, an extraordinary shelf life and is 100% odour proof said Nitrocin Vice President Eric Marciniak. It is also highly childproof, tamper evident, and 100% recyclable he said. The company uses a drop of liquid nitrogen to push all of the oxygen out of the can before sealing it. Keeping the cannabis in an anaerobic environment means it won't lose flavour, terpenes or its freshness over time said Marciniak. This is a similar process to how beer, wine and water are kept fresh in their bottles he added.

1 Defendants deny any remaining allegation in Paragraph 100.

2 101. Defendants deny the allegations in Paragraph 101.

3 102. Defendants deny the allegations in Paragraph 102.

4 103. Defendants deny the allegations in Paragraph 103.

5 104. Defendants deny the allegations in Paragraph 104.

6 105. Answering Paragraph 105, Defendants admit only that Exhibit G is a true and  
7 accurate copy of Nitrotrin's "home" page as of January 16, 2019. Defendants are without  
8 knowledge or information sufficient to form a belief as to the truth or falsity of the  
9 remaining allegations set forth in Paragraph 105 and, accordingly, deny the same.

10 106. Defendants are without knowledge or information sufficient to form a belief  
11 as to the truth or falsity of the remaining allegations set forth in Paragraph 106 and,  
12 accordingly, deny the same.

13 107. Answering Paragraph 107, Defendants admit only that both Exhibit G and  
14 Exhibit H state:

15 Our patented process of packaging controlled substances in a hermetically  
16 sealed container with a modified atmosphere greatly extends the shelf life  
17 of any contents. Our modified seamer hermetically seals each can after it's  
18 flushed with liquid nitrogen with an easy to open pop-top lid to create an  
air-tight and completely odorless package—that is, until you pop the lid and  
inhale the ripe, harvest-fresh aroma.

19 Defendants deny any remaining allegation in Paragraph 107.

20 108. Answering Paragraph 108, Defendants admit only that both Exhibit G and  
21 Exhibit H state:

22 One of the greatest advantages that nitrogen packing achieves is the ease of  
23 implementation. Our system is designed for companies to quickly make a  
24 transition to a more efficient and all around higher quality packaging  
system.

25 Defendants deny any remaining allegation in Paragraph 108.

26 109. Answering Paragraph 109, Defendants admit only that Exhibit G, under the  
27 title "What Sets Us Apart," provides six categories including "freshness," "shelf-life,"  
28 "preservation," "store & transport," "branding," and "tracking." Defendants further admit

1 that Exhibit H has six boxes reading “fresher in the can,” “sustainable packaging,” “shelf  
2 life,” “branding,” “inventory control,” and “tracking.” Defendants deny any remaining  
3 allegation in Paragraph 109.

4 110. Defendants deny the allegations in Paragraph 110.

5 111. Defendants deny the allegations in Paragraph 111.

6 112. Defendants deny the allegations in Paragraph 112.

7 113. Defendants deny the allegations in Paragraph 113.

8 114. Defendants deny the allegations in Paragraph 114.

9 115. Defendants deny the allegations in Paragraph 115.

10 116. Defendants deny the allegations in Paragraph 116.

11 117. Defendants deny the allegations in Paragraph 117.

### 12 **Count One**

#### 13 **(Breach of Contract)**

#### 14 **(against N2 Canada Defendants)**

15 118. Answering Paragraph 118, Defendants incorporate their responses to the  
16 preceding Paragraphs.

17 119. Answering Paragraph 119, Defendants admit only that N2 Packaging  
18 Systems, LLC and N2 Pack Canada entered into the N2 Pack Canada Packaging Supply  
19 Agreement. Defendants deny any remaining allegation in Paragraph 119.

20 120. Answering Paragraph 120, Defendants admit only that Section 10 of the N2  
21 Pack Canada Packaging Supply Agreement provides:

22 During the term of this Agreement, Processor: (i) shall not utilize a packaging  
23 line of any type to package Product utilizing N2 Packaging’s Packaging  
24 Process; and (ii) shall not utilize N2 Packaging’s Proprietary Process or the  
25 packaging equipment for any purpose or reason other than to package its  
26 Product.

27 [See Doc. 9-1 at 132 § 10.] Defendants deny any remaining allegation in Paragraph 120.

28 121. Defendants deny the allegations in Paragraph 121.

122. Defendants deny the allegations in Paragraph 122.

123. Defendants deny the allegations in Paragraph 123.

124. Answering Paragraph 124, Defendants admit only that on January 29, 2019 N2 Packaging Systems, LLC sent N2 Pack Canada, Marciniak, Pogue, and Abellan a cease and desist letter in which N2 Packaging Systems, LLC stated, among other things, that it was “invok[ing] its rights under Section 11(1) of the Agreement” and “demand[ing] that N2 Canada ‘execute such documentation and take other steps requested by N2 Packaging to maintain, establish and protect N2 Packaging’s ownership interest in the Proprietary Process.’” Defendants further admit that N2 Packaging Systems, LLC also sent a cease and desist letter to Nitrocin, Inc., Brent MacNeil, Lenard Walser, Pogue, and Marciniak on January 29, 2019. Defendants deny any remaining allegation in Paragraph 124.

125. Defendants deny the allegations in Paragraph 125.

126. Defendants deny the allegations in Paragraph 126.

127. Defendants deny the allegations in Paragraph 127.

128. Defendants deny the allegations in Paragraph 128.

129. Defendants deny the allegations in Paragraph 129.

### **Count Two**

#### **(Breach of Contract)**

#### **(against Abellan)**

130. Answering Paragraph 130, Defendants incorporate their responses to the preceding Paragraphs.

131. Defendants admit the allegations in Paragraph 131.

132. Answering Paragraph 132, Defendants admit only that the Independent Contractor Agreement provides:

Contractor shall have no right, title or interest in or to the Proprietary Process, any rights any technology rights, whether patentable or not, or any patents, patent applications, trade secrets or other proprietary rights of N2 Packaging. Contractor shall not modify or otherwise reverse engineer the Proprietary Process. Contractor shall not seek any intellectual property protection, including, without limitation, any patent relating to or otherwise directed to the manufacture or use of the Proprietary Process. Contractor shall execute such documentation and other steps requested by N2 Packaging to maintain, establish and protect N2 Packaging’s ownership interests in the proprietary

1 Process, and Contractor shall not take any actions inconsistent with such  
2 ownership by N2 Packaging . . .

3 [See Doc. 9-2 at 3 § 2.a.] Defendants deny any remaining allegation in Paragraph 132.

4 133. Defendants deny the allegations in Paragraph 133.

5 134. Defendants deny the allegations in Paragraph 134.

6 135. Answering Paragraph 135, Defendants admit only that the Independent  
7 Contractor Agreement provides:

8 Contractor shall maintain the Proprietary Information as completely  
9 confidential and secret at all times; and shall not, at any time, either during  
10 or subsequent to the business relationship with N2 Packaging, directly or  
11 indirectly, use, disseminate, appropriate, disclose or divulge any Proprietary  
12 Information to any third party entity, or individual, unless authorized or  
13 directed to do so by N2 Packaging, or required to do so by a court or other  
14 governmental entity acting with the force of law.

15 [See Doc. 9-2 at 4 § 2.c.] Defendants deny any remaining allegation in Paragraph 135.

16 136. Defendants deny the allegations in Paragraph 136.

17 137. Answering Paragraph 137, Defendants admit only that the Independent  
18 Contractor Agreement provides:

19 Contractor shall not use the Proprietary Information: (a) to provide any  
20 services to or on behalf of any person or entity, either as independent  
21 contractor, consultant or employee; or (b) to engage or become interested (as  
22 owner, stockholder, partner, director, officer, consultant, member or creditor)  
23 in any business or operation directly or indirectly competitive to N2  
24 Packaging.

25 [See Doc. 9-2 at 4 § 2.d.] Defendants deny any remaining allegation in Paragraph 137.

26 138. Defendants deny the allegations in Paragraph 138.

27 139. Defendants deny the allegations in Paragraph 139.

28 140. Defendants deny the allegations in Paragraph 140.

141. Defendants deny the allegations in Paragraph 141.

### **Count Three**

#### **(Breach of Contract)**

#### **(against Chakra)**

142. Answering Paragraph 142, Defendants incorporate their responses to the

preceding Paragraphs.

143. Defendants admit the allegations in Paragraph 143.

144. Answering Paragraph 144, Defendants admit only that the Chakra Packaging Supply Agreement provides:

During the term of this Agreement, Processor: (i) shall not utilize a packaging line of any Type to package Product utilizing N2 Packaging's Packaging Process; and (ii) shall not utilize N2 Packaging's Proprietary Process or the packaging equipment, inclusive of the standard "25-30 cans per minute" Mini-Seamer and Nitrogen Inerter, for any purpose or reason other than to package its Product.

[See Doc. 9-2 at 12–13 § 11.] Defendants deny any remaining allegation in Paragraph 144.

145. Defendants deny the allegations in Paragraph 145.

146. Answering Paragraph 146, Defendants admit only that the Chakra Packaging Supply Agreement provides:

N2 Packaging owns the Proprietary Process, including all applicable patent(s). Processor shall have no right, title or interest in or to the Proprietary Process, except the limited license to utilize the Proprietary Process pursuant to and in accordance with this Agreement. Processor shall have no rights under any technology rights, whether patentable or not, or any patents, patent applications, trade secrets or other proprietary rights of N2 Packaging. Processor shall not modify or otherwise reverse engineer the Proprietary Process; and shall not seek any intellectual property protection, including, without limitation, any patent relating to or otherwise directed to the manufacture or use of the Proprietary Process in conjunction or in combination with any other produce or process utilizing, employing or otherwise applying the Proprietary Process or any portion or derivations thereof. Processor shall execute such documentation and other steps requested by N2 Packaging to maintain, establish and protect N2 Packaging's ownership interests in the proprietary Process, and Processor shall not take any actions inconsistent with such ownership by N2 Packaging.

[See *id.* at 13 § 12.1.] Defendants deny any remaining allegation in Paragraph 146.

147. Defendants deny the allegations in Paragraph 147.

148. Answering Paragraph 148, Defendants admit only that the Chakra Packaging Supply Agreement provides:

The Confidential information received by a party (the "Receiving Party") from the other party (the "Disclosing Party") shall not be disclosed by the Receiving Party to any Third Party without the express written consent of the

1 Disclosing Party; and shall not be used by the Receiving Party for purposes  
2 other than those contemplated by this Agreement.

3 [See *id.* at 13–14 § 12.2.] Defendants deny any remaining allegation in Paragraph 148.

4 149. Defendants deny the allegations in Paragraph 149.

5 150. Defendants deny the allegations in Paragraph 150.

6 151. Defendants deny the allegations in Paragraph 151.

7 152. Defendants deny the allegations in Paragraph 152.

#### 8 **Count Four**

#### 9 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

#### 10 **(against all Defendants)**

11 153. Answering Paragraph 153, Defendants incorporate their responses to the  
12 preceding Paragraphs.

13 154. Answering Paragraph 154, Defendants admit only that the covenant of good  
14 faith and fair dealing is implied in every valid and enforceable contract. Defendants deny  
15 any remaining allegation in Paragraph 154.

16 155. Answering Paragraph 155, Defendants admit only that the Independent  
17 Contractor Agreement, Chakra Packaging Supply Agreement, and N2 Pack Canada  
18 Packaging Supply Agreement set forth the entire understanding of the parties with respect  
19 to the subject matter thereof and speak for themselves. Defendants deny any remaining  
20 allegation in Paragraph 155.

21 156. Defendants deny the allegations in Paragraph 156.

22 157. Defendants deny the allegations in Paragraph 157.

23 158. Defendants deny the allegations in Paragraph 158.

24 159. Defendants deny the allegations in Paragraph 159.

#### 25 **Count Five**

#### 26 **(Tortious Interference with Contract)**

#### 27 **(against Abellan)**

28 160. Answering Paragraph 160, Defendants incorporate their responses to the



preceding Paragraphs.

161. Defendants admit the allegations in Paragraph 161.

162. Answering Paragraph 162, Defendants admit only that Abellan is a director of Chakra and N2 Pack Canada, and that Abellan was aware of the Chakra Packaging Supply Agreement and N2 Pack Canada Packaging Supply Agreement. Defendants deny any remaining allegation in Paragraph 162.

163. Defendants deny the allegations in Paragraph 163.

164. Defendants deny the allegations in Paragraph 164.

165. Defendants deny the allegations in Paragraph 165.

166. Defendants deny the allegations in Paragraph 166.

### **Count Six**

#### **(Fraud in the Inducement)**

#### **(against Abellan)**

167. Answering Paragraph 167, Defendants incorporate their responses to the preceding Paragraphs.

168. Defendants deny the allegations in Paragraph 168.

169. Defendants deny the allegations in Paragraph 169.

170. Answering Paragraph 170, Defendants admit only that the Chakra Packaging Supply Agreement sets forth the entire understanding of the parties with respect to the subject matter thereof and supersedes all prior agreements, written or oral, between the parties. [See Doc. 9-2 at 17 § 27.] Defendants deny any remaining allegation in Paragraph 170.

171. Answering Paragraph 171, Defendants admit only that the Chakra Packaging Supply Agreement sets forth the entire understanding of the parties with respect to the subject matter thereof and supersedes all prior agreements, written or oral, between the parties. [See *id.*] Defendants further state that the Chakra Packaging Supply Agreement speaks for itself. Defendants deny any remaining allegation in Paragraph 171.

172. Defendants deny the allegations in Paragraph 172.

173. Defendants deny the allegations in Paragraph 173.

174. Defendants deny the allegations in Paragraph 174.

175. Defendants deny the allegations in Paragraph 175.

176. Defendants deny the allegations in Paragraph 176.

177. Defendants deny the allegations in Paragraph 177.

178. Defendants deny the allegations in Paragraph 178.

### **Count Seven**

#### **(Fraud in the Inducement)**

#### **(against N2 Canada Principals)**

179. Answering Paragraph 179, Defendants incorporate their responses to the preceding Paragraphs.

180. Answering Paragraph 180, Defendants admit only that Marciniak and Pogue signed the N2 Pack Canada Packaging Supply Agreement on behalf of N2 Pack Canada. Defendants deny any remaining allegation in Paragraph 180.

181. Defendants deny the allegations in Paragraph 181.

182. Answering Paragraph 182, Defendants admit only that the N2 Pack Canada Packaging Supply Agreement sets forth the entire understanding of the parties with respect to the subject matter thereof and supersedes all prior agreements, written or oral, between the parties. [See Doc. 9-1 at 137 § 26.] Defendants deny any remaining allegation in Paragraph 182.

183. Defendants deny the allegations in Paragraph 183.

184. Defendants deny the allegations in Paragraph 184.

185. Defendants deny the allegations in Paragraph 185.

186. Defendants deny the allegations in Paragraph 186.

187. Defendants deny the allegations in Paragraph 187.

188. Defendants deny the allegations in Paragraph 188.

189. Defendants deny the allegations in Paragraph 189.

### **Count Eight**

**(Alter Ego)****(against N2 Canada Principals)**

190. Answering Paragraph 190, Defendants incorporate their responses to the preceding Paragraphs.

191. Defendants deny the allegations in Paragraph 191.

192. Defendants deny the allegations in Paragraph 192.

193. Defendants deny the allegations in Paragraph 193.

194. Defendants deny the allegations in Paragraph 194.

195. Defendants deny the allegations in Paragraph 195.

196. Defendants deny the allegations in Paragraph 196.

**Count Nine****(Violation of A.R.S. § 44-1522; Unlawful Practices)****(against all Defendants)**

197. Answering Paragraph 197, Defendants incorporate their responses to the preceding Paragraphs.

198. Defendants deny the allegations in Paragraph 198. Defendants further state that Plaintiff has voluntarily dismissed Count Nine. [*See* Doc. 35 at n. 1.]

199. Defendants deny the allegations in Paragraph 199. Defendants further state that Plaintiff has voluntarily dismissed Count Nine. [*See id.*]

200. Defendants deny the allegations in Paragraph 200. Defendants further state that Plaintiff has voluntarily dismissed Count Nine. [*See id.*]

**Count Ten****(Punitive Damages)****(against all Defendants)**

201. Answering Paragraph 201, Defendants incorporate their responses to the preceding Paragraphs.

202. Defendants deny the allegations in Paragraph 202.

203. Defendants deny the allegations in Paragraph 203.

204. Defendants deny the allegations in the next (unnumbered) paragraph beginning “WHEREFORE,” including those allegations contained in the sub-paragraphs a–e thereto.

### **GENERAL DENIAL**

205. Defendants deny all allegations in the Verified First Amended Complaint that are not expressly admitted herein. Defendants deny that Plaintiff is entitled to any relief whatsoever.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

As separate, alternative, defenses and affirmative defenses, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein, the Defendants allege as follows:

206. Marciniak and Pogue are not subject to personal jurisdiction in this forum.

207. Counts Eight and Ten fail to state any claim upon which relief may be granted.

208. N2 Packaging’s breach of contract claims, to the extent they allege claims for patent infringement, are preempted by federal patent law.

209. N2 Packaging materially breached the terms of the Independent Contractor Agreement, Chakra Packaging Supply Agreement, and N2 Pack Canada Packaging Supply Agreement before any alleged breach by Defendants occurred.

210. N2 Packaging failed to mitigate any alleged damages arising from Defendants’ alleged breaches of the Independent Contractor Agreement, Chakra Packaging Supply Agreement, and N2 Pack Canada Packaging Supply Agreement.

211. N2 Packaging has unclean hands.

212. Before entering the N2 Pack Canada Packaging Supply Agreement, N2 Packaging made a material misrepresentation to N2 Pack Canada regarding N2 Pack Canada’s Preferred Exclusive Basis under the N2 Pack Canada Packaging Supply Agreement.

213. N2 Packaging fraudulently induced N2 Pack Canada to enter into the N2 Pack Canada Packaging Supply Agreement by concealing N2 Packaging’s intent to use N2 Pack

1 Canada for the sole purpose of getting nitrogen legalized for use with Cannabis in Canada;  
2 N2 Packaging never intended to honor the Preferred Exclusive Basis under the N2 Pack  
3 Canada Packaging Supply Agreement.

4 214. The Independent Contractor Agreement, Chakra Packaging Supply  
5 Agreement, and N2 Pack Canada Packaging Supply Agreement are illegal and against  
6 public policy.

7 215. The confidentiality provisions of the Independent Contractor Agreement  
8 [Doc. 9-2 at 2, 4 Recitals & §§ 2.b–2.e], Chakra Packaging Supply Agreement [*id.* at 8–9,  
9 13 §§ 1.4, 1.6–1.9, 12.2–12.3], and N2 Pack Canada Packaging Supply Agreement [Doc.  
10 9-1 at 128–29, 133–34 §§ 1.4, 1.6, 1.9–1.10, 11.2–11.3] are overbroad and unenforceable  
11 because they seek to protect public patent filings as “confidential information,” but N2  
12 Packaging intentionally disclosed the information in the patent filings to the public, and the  
13 confidentiality provisions do not contain any exception for public information.

14 216. Defendants expressly preserve and do not waive any other affirmative defense  
15 set forth in Rules 8 and 12 of the Federal Rules of Civil Procedure, which may become  
16 evident through discovery or otherwise.

17 WHEREFORE, the Defendants pray for judgment as follows:

18 A. That Plaintiff takes nothing by way of the Verified First Amended Complaint;

19 B. That the Court enter judgment in favor of Defendants and against Plaintiff on  
20 any and all claims for relief alleged in the Verified First Amended Complaint;

21 C. That Defendants be awarded their attorneys’ fees and the costs of this suit,  
22 together with interest thereon at the highest rate provided by law from the date of entry of  
23 judgment until paid in full; and

24 D. For such other relief as the Court deems just.

25 **COUNTERCLAIMS OF 1079765 B.C. LIMITED D/B/A N2 PACK CANADA, INC.,**

26 **ERIC MARCINIAK, BRENDAN POGUE, ALEX ABELLAN, AND CHAKRA**

27 **CANNABIS CORP.**

28 Counterclaimants 1079765 B.C. Limited d/b/a N2 Pack Canada, Inc. (“N2 Pack

Canada”), Eric Marciniak, Brendan Pogue, Alex Abellan, and Chakra Cannabis Corp. (“Chakra”) (collectively “Counterclaimants”), by and through undersigned counsel, for their Counterclaims against N2 Packaging Systems, LLC (“N2 Packaging” or “Counterdefendant”), hereby allege as follows:

### PARTIES

1. N2 Pack Canada is a corporation incorporated under the laws of British Columbia, Canada with its principal place of business in British Columbia.

2. Eric Marciniak is, and at all relevant times was, a resident of British Columbia, Canada.

3. Brendan Pogue is, and at all relevant times was, a resident of British Columbia, Canada.

4. Alex Abellan is, and at all relevant times was, a resident of British Columbia, Canada.

5. Chakra Cannabis Corp. is a Canadian federal corporation.

6. N2 Packaging is an Arizona limited liability company doing business in Maricopa County, Arizona and in Idaho.

7. Upon information and belief, N2 Packaging has three members: (1) Martin Holdings Corp.; (2) Dave Sibley; and (3) Win Investment Group, LLC.

8. Upon information and belief, Martin Holdings Corp. is incorporated under the laws of Idaho and has its principal place of business in Idaho.

9. Upon information and belief, Dave Sibley is, and at all relevant times was, either a resident of Idaho or California.

10. Upon information and belief, Win Investment Group, LLC is an Idaho limited liability company doing business in Idaho.

11. Upon information and belief, Win Investment Group, LLC has four members: (1) Mike Standlee; (2) Bobby Delgado; (3) 3M Investment Group, LLC; and (4) Skylar Jessen.

12. Upon information and belief, Mike Standlee is, and at all relevant times was,

1 either a resident of Idaho or Arizona.

2 13. Upon information and belief, Bobby Delgado is, and at all relevant times was,  
3 a resident of Idaho.

4 14. Upon information and belief, 3M Investment Group, LLC is an Idaho limited  
5 liability company doing business in Idaho.

6 15. Upon information and belief, Skylar Jessen is, and at all relevant times was,  
7 a resident of Idaho or Arizona.

8 16. Upon information and belief, 3M Investment Group, LLC has three members:  
9 (1) Dusty Standlee; (2) William “Billy” Salts; and (3) Scott E. Plew.

10 17. Upon information and belief, Dusty Standlee is, and at all relevant times was,  
11 a resident of Idaho.

12 18. Upon information and belief, William “Billy” Salts is, and at all relevant  
13 times was, a resident of Idaho.

14 19. Upon information and belief, Scott E. Plew is, and at all relevant times was,  
15 a resident of Idaho.

## 16 JURISDICTION AND VENUE

17 20. This action arises under 35 U.S.C. § 271, 28 U.S.C. § 2201, and the common  
18 law of the state of Arizona.

19 21. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 28  
20 U.S.C. § 1338 for claims arising under patent law, and supplemental jurisdiction under 28  
21 U.S.C. § 1367 for the related state-law claims.

22 22. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because  
23 this action is between citizens of a State and citizens or subjects of a foreign state, and the  
24 amount in controversy exceeds \$75,000, exclusive of interest and costs.

25 23. This Court has personal jurisdiction over N2 Packaging because N2  
26 Packaging does business in this district and consented to personal jurisdiction by filing the  
27 Complaint in this district.

28 24. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c)



1 because N2 Packaging is subject to personal jurisdiction in this district and under 28 U.S.C.  
2 § 1400(b) because N2 Packaging has a regular and established place of business in this  
3 district.

#### 4 THE AGREEMENTS

5 25. N2 Packaging and Abellan are parties to an Independent Contractor  
6 Agreement (the “Independent Contractor Agreement”).

7 26. The Independent Contractor Agreement has an effective date of March 28,  
8 2017. [Doc. 9-2 at 6.]

9 27. N2 Packaging and Chakra are parties to a Packaging Supply Agreement (the  
10 “Chakra Supply Agreement”).

11 28. The Chakra Supply Agreement has an effective date of June 27, 2017. [Doc.  
12 9-2 at 8.]

13 29. N2 Packaging and N2 Pack Canada are parties to a Packaging Supply  
14 Agreement (the “N2 Pack Canada Supply Agreement”).

15 30. The N2 Pack Canada Supply Agreement has an effective date of December  
16 22, 2017. [Doc. 9-1 at 128.]

17 31. Pursuant to the terms of the N2 Pack Canada Supply Agreement, N2  
18 Packaging agreed to provide to N2 Pack Canada—on a Preferred Exclusive Basis—its  
19 Packaging Process, which allegedly utilizes its Proprietary Process, and to supply N2 Pack  
20 Canada with packaging materials. [*Id.*]

21 32. The N2 Pack Canada Supply Agreement defines “Packaging Process” as “the  
22 use of the Proprietary Process to seal hermetically Product in a can for distribution and sale  
23 to consumers as described in Patent No. US 8,863,947 B2 issued October 21, 2014.” [*Id.*  
24 at 129 § 1.6.]

25 33. The N2 Pack Canada Supply Agreement defines “Proprietary Process” as “N2  
26 Packaging’s patented proprietary process (described in that certain patent issued: Patent No.  
27 US 8,863,947 B2 issued October 21, 2014), including, without limitation, any and all  
28 modifications, betterments and advancements to said proprietary process, whether or not

1 patentable.” *Id.* at § 1.9.]

2 34. The N2 Pack Canada Supply Agreement defines “Preferred Exclusive Basis”  
3 as “[t]he limitation on N2 Packaging to grant in Canada no more than two (2) licenses to  
4 use the Packaging Process that utilizes the Proprietary Process.” *Id.* at § 1.7.]

5 35. The N2 Pack Canada Supply Agreement also contains the following  
6 provision:

7 **High Volume Minimum Requirements of Packaging Materials.** [N2 Pack  
8 Canada] shall order not less than the number of metal food grade cans  
9 (whether of the one-eighth (1/8) ounce size can or of the one-quarter (1/4)  
10 ounce size can) in pallet increments to meet or exceed the applicable  
11 projection in the projections attached hereto as Attachment D for the sale of  
12 Product during the consecutive twelve (12) month period of each term of this  
13 Agreement (the “High Volume Minimum Requirement”), which obligation  
14 shall survive the termination of this Agreement. [N2 Pack Canada]’s orders  
15 of said packaging materials in excess of the High Volume Minimum  
16 Requirement shall be in pallet increments.

17 In the event [N2 Pack Canada] fails to meet or exceed eighty percent (80%)  
18 if the High Volume Minimum Requirement of a consecutive twelve (12)  
19 month term of this Agreement, N2 Packaging may, in its sole and absolute  
20 discretion, terminate the Preferred Exclusive Basis of this Agreement at the  
21 end of such consecutive twelve (12) month term.

22 *Id.* at 131 § 6 (underline added).]

23 36. The N2 Pack Canada Supply Agreement defines “Product” as “Products using  
24 or otherwise involving the Proprietary Process.” *Id.* at 129 § 1.8.]

25 37. The N2 Pack Canada Supply Agreement provides that it “shall be construed  
26 and enforced in accordance with the laws of the state of Arizona, without regard to its choice  
27 of law provisions.” *Id.* at 136 § 21.]

## 28 **N2 PACK CANADA PERFORMS UNDER THE N2 PACK CANADA SUPPLY AGREEMENT**

38. As of the N2 Pack Canada Supply Agreement’s effective date, the Proprietary  
Process—in particular the use of nitrogen in the canning of Cannabis—was not approved  
for use by the Canadian government.

39. N2 Pack Canada, at its own expense, spent the first seven months after the  
effective date of the N2 Pack Canada Supply Agreement lobbying the Canadian government  
to have the Proprietary Process approved for use.

40. During this time, in order to comply with the terms of the N2 Pack Canada Supply Agreement [Doc. 9-1 at 129–31, 139 §§ 2, 4–8 & Attachment A], N2 Pack Canada placed an order for certain packaging equipment and materials from N2 Packaging.

41. On March 12, 2018, N2 Packaging provided N2 Pack Canada with an estimate totaling \$538,036.20 USD for packaging equipment and materials.

42. On April 3, 2018, N2 Pack Canada paid N2 Packaging \$269,000 USD as partial payment for the estimate that N2 Packaging had provided on March 12, 2018.

43. During this time, N2 Pack Canada also placed an order pursuant to the N2 Pack Canada Supply Agreement related to Truro Herbal Co.

44. During this time, N2 Pack Canada presented to N2 Packaging another opportunity pursuant to the N2 Pack Canada Supply Agreement related to Cannabis West Development.

45. The orders N2 Pack Canada obtained from Truro Herbal Co. and Cannabis West Development would have met or exceeded the High Volume Minimum Requirement set forth in Section 6 of the N2 Pack Canada Supply Agreement.

### **N2 PACKAGING’S WRONGFUL CONDUCT**

46. Despite N2 Pack Canada’s payment of \$269,000 to N2 Packaging, the packaging equipment and materials listed on the estimate were never delivered.

47. N2 Packaging also refused to fulfill N2 Pack Canada’s order related to Truro Herbal Co., and upon information and belief, attempted to cut N2 Pack Canada out of the deal so that it could sell Product directly to and/or license the Proprietary Process directly to Truro Herbal Co.

48. N2 Packaging also attempted to cut N2 Pack Canada out of the deal with Cannabis West Development.

49. N2 Packaging further used Abellan’s customs number to ship a legitimate machine to Chakra, while, without disclosing to Counterclaimants, using Abellan’s customs number to ship an illegitimate machine to a third-party.

50. On September 19, 2018, after N2 Pack Canada was able to have the

1 Proprietary Process approved in Canada, N2 Packaging notified N2 Pack Canada that it was  
2 terminating the Preferred Exclusive Basis under the N2 Pack Canada Supply Agreement.

3 51. Although the September 19, 2018 notification stated that the termination was  
4 not effective until December 23, 2018, N2 Packaging did not give N2 Pack Canada the  
5 opportunity to cure or to otherwise perform under Section 6 of the N2 Pack Canada Supply  
6 Agreement.

7 52. N2 Packaging's termination of N2 Pack Canada's Preferred Exclusive Basis  
8 under the N2 Pack Canada Supply Agreement before the consecutive twelve-month term  
9 ended on December 22, 2018 was a material breach of the N2 Pack Canada Supply  
10 Agreement.

11 53. On information and belief, N2 Packaging did not intend to perform under the  
12 N2 Pack Canada Supply Agreement and intended to breach the N2 Pack Canada Supply  
13 Agreement once N2 Pack Canada was able to get the Proprietary Process approved in  
14 Canada.

15 54. On information and belief, N2 Packaging terminated N2 Pack Canada's  
16 Preferred Exclusive Basis under the N2 Pack Canada Supply Agreement so that it could  
17 grant other Canadian entities licenses to use the Proprietary Process in Canada.

## 18 **COUNTERCLAIM I**

### 19 **(Breach of Contract)**

20 55. Counterclaimants hereby reallege and incorporate by reference the preceding  
21 paragraphs of this Counterclaim as though fully set forth herein.

22 56. N2 Packaging is a party to and executed the N2 Pack Canada Supply  
23 Agreement.

24 57. N2 Pack Canada is a party to and executed the N2 Pack Canada Supply  
25 Agreement.

26 58. The N2 Pack Canada Supply Agreement has an effective date of December  
27 22, 2017.

28 59. Before N2 Packaging's prior material breach, the N2 Pack Canada Supply

1 Agreement was a valid and enforceable contact.

2 60. N2 Pack Canada fulfilled all its obligations under the N2 Pack Canada Supply  
3 Agreement.

4 61. All conditions required by the N2 Pack Canada Supply Agreement for N2  
5 Packaging's performance occurred.

6 62. N2 Packaging materially breached the N2 Pack Canada Supply Agreement,  
7 including but not limited to Sections 2, 4–10, by failing to have the packaging equipment  
8 and materials listed on the estimate delivered.

9 63. N2 Packaging materially breached Section 6 of the N2 Pack Canada Supply  
10 Agreement by terminating N2 Pack's Preferred Exclusive Basis before the consecutive  
11 twelve-month term ended on December 22, 2018.

12 64. As a direct and proximate result of N2 Packaging's material breaches of the  
13 N2 Pack Canada Supply Agreement, N2 Pack Canada has suffered and will continue to  
14 suffer damages in an amount to be determined at trial, but no less than \$269,000.

15 65. Section 23 of the N2 Pack Canada Supply Agreement provides that "[i]n the  
16 event any party to the Agreement is required to institute legal proceedings to enforce the  
17 terms of this Agreement, the prevailing party in such legal proceeding shall be entitled to  
18 an award of all reasonable attorney fees and costs incurred at all stages of such legal  
19 proceeding, including any appeal therefrom." [Doc. 9-1 at 136 § 23.]

20 66. N2 Pack is entitled to recover its attorneys' fees and costs pursuant to the  
21 terms of the N2 Pack Canada Supply Agreement and Arizona law. [*See id.*] A.R.S. § 12-  
22 341; A.R.S. § 12-341.01.

## 23 **COUNTERCLAIM II**

### 24 **(Breach of The Implied Covenant of Good Faith & Fair Dealing)**

25 67. Counterclaimants hereby reallege and incorporate by reference the preceding  
26 paragraphs of this Counterclaim as though fully set forth herein.

27 68. N2 Packaging is a party to and executed the N2 Pack Canada Supply  
28 Agreement.

1           69.    N2 Pack Canada is a party to and executed the N2 Pack Canada Supply  
2 Agreement.

3           70.    The N2 Pack Canada Supply Agreement has an effective date of December  
4 22, 2017.

5           71.    Before N2 Packaging's prior material breach, the N2 Pack Canada Supply  
6 Agreement was a valid and enforceable contact.

7           72.    N2 Pack Canada fulfilled all of its obligations under the N2 Pack Canada  
8 Supply Agreement.

9           73.    All conditions required by the N2 Pack Canada Supply Agreement for N2  
10 Packaging's performance have occurred.

11          74.    N2 Packaging unfairly interfered with N2 Pack Canada's right to receive the  
12 benefits of the N2 Pack Canada Supply Agreement.

13          75.    In entering into the N2 Pack Canada Supply Agreement, N2 Packaging  
14 represented to N2 Pack Canada that it would supply N2 Pack Canada with packaging  
15 equipment and materials so that N2 Pack Canada could perform under the N2 Pack Canada  
16 Supply Agreement.

17          76.    But instead, upon information and belief, N2 Packaging failed to deliver the  
18 packaging equipment and materials listed on the estimate.

19          77.    In entering into the N2 Pack Canada Supply Agreement, N2 Packaging also  
20 represented to N2 Pack Canada that it would have a Preferred Exclusive Basis, as defined  
21 by the N2 Pack Canada Supply Agreement, for at least twelve consecutive months.

22          78.    But instead, upon information and belief, N2 Packaging refused to fulfill N2  
23 Pack Canada's orders under the N2 Pack Canada Supply Agreement and worked instead  
24 with other Canadian entities, granting those entities licenses to use the Proprietary Process  
25 in Canada.

26          79.    Upon information and belief, N2 Packaging intended only for N2 Pack  
27 Canada, at its own expense, to get the Proprietary Process approved in Canada and did not  
28 intend to perform under the N2 Pack Canada Supply Agreement. N2 Packaging did not

1 disclose this intent to N2 Pack Canada before entering the N2 Pack Canada Supply  
2 Agreement.

3 80. As a proximate result of N2 Packaging's improper and wrongful actions, N2  
4 Pack Canada has suffered and will continue to suffer damages in an amount to be  
5 determined at trial, but no less than \$269,000.

6 81. Section 23 of the N2 Pack Canada Supply Agreement provides that "[i]n the  
7 event any party to the Agreement is required to institute legal proceedings to enforce the  
8 terms of this Agreement, the prevailing party in such legal proceeding shall be entitled to  
9 an award of all reasonable attorney fees and costs incurred at all stages of such legal  
10 proceeding, including any appeal therefrom." [Doc. 9-1 at 136 § 23.]

11 82. N2 Pack is entitled to recover its attorneys' fees and costs pursuant to the  
12 terms of the N2 Pack Canada Supply Agreement and Arizona law. [See *id.*] A.R.S. § 12-  
13 341; A.R.S. § 12-341.01.

### 14 **COUNTERCLAIM III**

#### 15 **(Declaration of Non-Infringement of U.S. Patent 8,863,947)**

16 83. Counterclaimants hereby reallege and incorporate by reference the preceding  
17 paragraphs of this Counterclaim as though fully set forth herein.

18 84. N2 Packaging alleges that Abellan breached the Independent Contractor  
19 Agreement by "conspiring . . . to . . . infringe[] upon N2 Packaging's Intellectual Property,  
20 . . . and misappropriate N2 Packaging's Intellectual Property and Proprietary Process . . ."  
21 [Doc. 9 at 24–25 ¶ 133.]

22 85. The Independent Contractor Agreement defines "Proprietary Process" as "a  
23 patented proprietary process described in that certain patent issued: Patent No. US  
24 8,863,947 B2, issued October 21, 2014 to include, without limitation, any and all  
25 modifications, betterments, augmentations and advancements to said proprietary process,  
26 whether or not patentable[.]" [Doc. 9-2 at 2 (Recital 1).]

27 86. The Independent Contractor Agreement does not define the term Intellectual  
28 Property.



1 87. The Independent Contractor Agreement does not include any patent  
2 registration number other than U.S. Patent 8,863,947.

3 88. N2 Packaging alleges that Chakra breached the Chakra Packaging Supply  
4 Agreement by “utilizing and misappropriating N2 Packaging’s Intellectual Property and  
5 Proprietary Process[.]” [Doc. 9 at 26–27 ¶ 145.]

6 89. The Chakra Supply Agreement defines “Proprietary Process” as “N2  
7 Packaging’s patented proprietary process (described in that certain patent issued: Patent No.  
8 US 8,863,947 B2 issued October 21, 2014), including, without limitation, any and all  
9 modifications, betterments and advancements to said proprietary process, whether or not  
10 patentable.” [Doc. 9-2 at 9 § 1.8.]

11 90. The Chakra Supply Agreement does not define the term Intellectual Property.

12 91. The Chakra Supply Agreement does not include any patent registration  
13 number other than U.S. Patent 8,863,947.

14 92. N2 Packaging alleges that N2 Pack Canada, Marciniak, Pogue, and Abellan  
15 breached the N2 Pack Canada Supply Agreement “by facilitating and/or working in  
16 conjunction with Truro, DOES 1-10, Conspirators and Nitrofin to misappropriate and  
17 infringe upon N2 Packaging’s Intellectual Property and Proprietary Process [.]” [Doc. 9 at  
18 22–23 ¶ 121.]

19 93. The N2 Pack Canada Supply Agreement defines “Proprietary Process” as “N2  
20 Packaging’s patented proprietary process (described in that certain patent issued: Patent No.  
21 US 8,863,947 B2 issued October 21, 2014), including, without limitation, any and all  
22 modifications, betterments and advancements to said proprietary process, whether or not  
23 patentable.” [Doc. 9-1 at 129 § 1.9.]

24 94. The N2 Pack Canada Supply Agreement does not define the term Intellectual  
25 Property.

26 95. The N2 Pack Canada Supply Agreement does not include any patent  
27 registration number other than U.S. Patent 8,863,947.

28 96. In the First Amended Complaint, N2 Packaging purports to have protectible

1 patent rights in only three USPTO patents—U.S. Patents 8,863,947, 9,878,821, and  
2 10,124,941. [Doc. 9 at 5–8 ¶¶ 26, 29, 32, 35, 37 n.1, 39.]

3 97. U.S. Patents 9,878,821 and 10,124,941 were issued after the Independent  
4 Contractor Agreement’s effective date, March 28, 2017, the Chakra Supply Agreement’s  
5 effective date, June 27, 2017, and the N2 Pack Canada Supply Agreement’s effective date,  
6 December 22, 2017. [*Id.* at 6–7 ¶¶ 29, 35; Doc. 9-2 at 6 & 8; Doc. 9-1 at 128.]<sup>2</sup>

7 98. There exists an actual, ripe and justiciable controversy between  
8 Counterclaimants and N2 Packaging regarding Counterclaimants’ alleged infringement of  
9 N2 Packaging’s alleged rights in U.S. Patent 8,863,947.

10 99. Counterclaimants have not made, used, sold, offered for sale within, or  
11 imported into the United States any product or process, let alone any patented invention.

12 100. Pursuant to 28 U.S.C. § 2201, the Court should declare that Counterclaimants  
13 have not infringed U.S. Patent 8,863,947.

14 101. This is an exceptional case under 35 U.S.C. § 285 entitling Counterclaimants  
15 to an award of their reasonable attorneys’ fees, because N2 Packaging knows  
16 Counterclaimants have not performed any action in the United States that is a prerequisite  
17 to a claim of patent infringement.

#### 18 **COUNTERCLAIM IV**

#### 19 **(Declaration of No Confidential Information or Trade Secret in Published Patent** 20 **and/or Patent Application)**

21 102. Counterclaimants hereby reallege and incorporate by reference the preceding  
22 paragraphs of this Counterclaim as though fully set forth herein.

23 103. N2 Packaging alleges that Abellan an breached the Independent Contractor

24 <sup>2</sup> Because U.S. Patents 9,878,821 and 10,124,941 issued after the Independent  
25 Contractor Agreement, Chakra Supply Agreement, and N2 Pack Canada Supply Agreement  
26 were executed, there could have been no meeting of the minds as to these patents, and thus  
27 they are not part of the Independent Contractor Agreement, Chakra Supply Agreement, and  
28 N2 Pack Canada Supply Agreement. However, if the Court determines that these patents  
are encompassed within the definition of “Proprietary Process” set forth in the Independent  
Contractor Agreement, Chakra Supply Agreement, and N2 Pack Canada Supply  
Agreement, Counterclaimants reserve the right to amend these Counterclaims to seek  
declaratory relief as to the non-infringement of U.S. Patents 9,878,821 and 10,124,941.

1 Agreement “improperly disclosing to Defendants and the Conspirators confidential  
2 information regarding N2 Packaging’s Intellectual Property and Proprietary Process[.]”  
3 [Doc. 9 at 25 ¶ 136.]

4 104. The Independent Contractor Agreement defines “Proprietary Process” as “a  
5 patented proprietary process described in that certain patent issued: Patent No. US  
6 8,863,947 B2, issued October 21, 2014 to include, without limitation, any and all  
7 modifications, betterments, augmentations and advancements to said proprietary process,  
8 whether or not patentable[.]” [Doc. 9-2 at 2 (Recital 1).]

9 105. N2 Packaging alleges that Chakra breached the Chakra Supply Agreement by  
10 “unlawfully disclosing confidential, proprietary and trade secret information regarding N2  
11 Packaging’s Intellectual Property and Proprietary Process[.]” [Doc. 9 at 28 ¶ 149.]

12 106. The Chakra Supply Agreement defines “Proprietary Process” as “N2  
13 Packaging’s patented proprietary process (described in that certain patent issued: Patent No.  
14 US 8,863,947 B2 issued October 21, 2014), including, without limitation, any and all  
15 modifications, betterments and advancements to said proprietary process, whether or not  
16 patentable.” [Doc. 9-2 at 9 § 1.8.]

17 107. N2 Packaging alleges that N2 Pack Canada, Marciniak, Pogue, and Abellan  
18 breached the N2 Pack Canada Supply Agreement “by disclosing, sharing and/or otherwise  
19 disseminating confidential information and trade secrets relating to N2 Packaging’s  
20 Intellectual Property and Proprietary Process [.]” [Doc. 9 at 23 ¶ 126.]

21 108. The N2 Pack Canada Supply Agreement defines “Proprietary Process” as “N2  
22 Packaging’s patented proprietary process (described in that certain patent issued: Patent No.  
23 US 8,863,947 B2 issued October 21, 2014), including, without limitation, any and all  
24 modifications, betterments and advancements to said proprietary process, whether or not  
25 patentable.” [Doc. 9-1 at 131 § 1.9.]

26 109. In the First Amended Complaint, N2 Packaging purports to have protectible  
27 intellectual property rights in only U.S. Patents 8,863,947, 9,878,821, and 10,124,941, and  
28 the First Amended Complaint also lists U.S. Patent Application No. 15/616,483, and WIPO

1 International Publication No. WO 2016/069304. [Doc. 9 at 5–8 ¶¶ 26, 29, 32, 35, 37 n.1,  
2 39.]

3 110. There exists an actual, ripe and justiciable controversy between  
4 Counterclaimants and N2 Packaging regarding whether U.S. Patent 8,863,947, U.S. Patent  
5 9,878,821, U.S. Patent 10,124,941, U.S. Patent Application No. 15/616,483, and WIPO  
6 International Publication No. WO 2016/069304 include any confidential information or  
7 trade secrets.

8 111. The Defend Trade Secrets Act defines a trade secret as “all forms and types  
9 of financial, business, scientific, technical, economic, or engineering information, including  
10 patterns, plans, compilations, program devices, formulas, designs, prototypes, methods,  
11 techniques, processes, procedures, programs, or codes, whether tangible or intangible, and  
12 whether or how stored, compiled, or memorialized physically, electronically, graphically,  
13 photographically, or in writing if— (A) the owner thereof has taken reasonable measures to  
14 keep such information secret; and (B) the information derives independent economic value,  
15 actual or potential, from not being generally known to, and not being readily ascertainable  
16 through proper means by, another person who can obtain economic value from the  
17 disclosure or use of the information[.]” 18 U.S.C. § 1839(3) (emphasis added).

18 112. Arizona law defines a trade secret as “information, including a formula,  
19 pattern, compilation, program, device, method, technique or process, that both: (a) Derives  
20 independent economic value, actual or potential, from not being generally known to, and  
21 not being readily ascertainable by proper means by, other persons who can obtain economic  
22 value from its disclosure or use[ and] (b) Is the subject of efforts that are reasonable under  
23 the circumstances to maintain its secrecy.” A.R.S. § 44-401(4) (emphasis added).

24 113. The word confidential is defined as “private” or “secret.” *See*  
25 <https://www.merriam-webster.com/dictionary/confidential>.

26 114. U.S. Patent 8,863,947 was published on May 15, 2012 and is publicly  
27 available through the [USPTO’s website](#).

28 115. U.S. Patent 9,878,821 was published on April 21, 2016 and is publicly

1 available through the [USPTO's website](#).

2 116. U.S. Patent 10,124,941 was published on May 31, 2018 and is publicly  
3 available through the [USPTO's website](#).

4 117. U.S. Patent Application Number 15/616,483 was published on December 14,  
5 2017 and is publicly available through the [USPTO's website](#).

6 118. WIPO International Publication No. WO 2016/069304 was published on June  
7 5, 2016 and is publicly available through the [WIPO's website](#).

8 119. N2 Packaging inserted U.S. Patent 8,863,947, U.S. Patent 9,878,821, U.S.  
9 Patent 10,124,941, and WIPO International Publication No. WO 2016/069304 into the  
10 public record by attaching them to the First Amended Complaint. [Doc. 9-1 at 2–126.]

11 120. Pursuant to 28 U.S.C. § 2201, the Court should declare that any information  
12 in U.S. Patent 8,863,947, U.S. Patent 9,878,821, U.S. Patent 10,124,941, U.S. Patent  
13 Application Number 15/616,483, and WIPO International Publication No. WO  
14 2016/069304 (the “Public Information”) is neither confidential nor a trade secret.

15 121. Pursuant to 28 U.S.C. § 2201, the Court should declare that N2 Packaging’s  
16 Intellectual Property, Packaging Process, and Proprietary Process do not include the Public  
17 Information.

### 18 **PRAYER FOR RELIEF**

19 122. WHEREFORE, Counterclaimants pray for judgment in its favor and against  
20 N2 Packaging, and the following relief:

- 21 A. For N2 Packaging to pay compensatory damages resulting from its wrongful  
22 conduct in an amount to be determined at trial, but no less than \$269,000;
- 23 B. For a declaration that Counterclaimants have not infringed U.S. Patent  
24 8,863,947;
- 25 C. For a declaration that any information in U.S. Patent 8,863,947, U.S. Patent  
26 9,878,821, U.S. Patent 10,124,941, patent application number 15/616,483,  
27 and WIPO International Publication No. WO 2016/069304 (i) is not  
28 confidential or a trade secret, and (ii) is not part of N2 Packaging’s Intellectual

Property, Packaging Process, or Proprietary Process;

D. For Counterclaimants' reasonable costs and attorneys' fees pursuant to Section 6 of the N2 Pack Canada Supply Agreement, A.R.S. § 12-341, and A.R.S. § 12-341.01;

E. For an award of Counterclaimants' reasonable attorneys' fees under 35 U.S.C. § 285;

F. For an award of pre- and/or post-judgment interest at the highest rate allowable by law; and

G. For such other relief as the Court deems just and proper.

### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Counterclaimants hereby demand a jury trial on all issues in this litigation that are triable to a jury.

DATED this 8th day of November, 2019.

SNELL & WILMER L.L.P.

By: s/ Rachael Peters Pugel

Robert A. Henry  
David G. Barker  
Rachael Peters Pugel  
One Arizona Center  
400 E. Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202

*Attorneys for Defendants and  
Counterclaimants 1079765 B.C.  
Limited d/b/a N2 Pack Canada, Inc.,  
Eric Marciniak, Brendan Pogue, Alex  
Abellan, and Chakra Cannabis Corp.*

Snell & Wilmer  
LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202  
602.382.6000

**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2019 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, which transmitted notice of the filing to all counsel of record.

s/ Cheri Zwijacz